

TITLE 78 RECODIFICATION - TITLE 78B**CHAPTER 7**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78B, Chapter 7, Protective Orders.

Highlighted Provisions:

This bill:

►

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:****78B-7-101**, Utah Code Annotated 1953**RENUMBERS AND AMENDS:****78B-7-102**, (Renumbered from 30-6-1, as last amended by Laws of Utah 2006, Chapter 157)**78B-7-103**, (Renumbered from 30-6-2, as last amended by Laws of Utah 2003, Chapter 68)**78B-7-104**, (Renumbered from 30-6-3, as last amended by Laws of Utah 2003, Chapter 68)**78B-7-105**, (Renumbered from 30-6-4, as last amended by Laws of Utah 2006, Chapter 157)**78B-7-106**, (Renumbered from 30-6-4.2, as last amended by Laws of Utah 2005, Chapter 156)**78B-7-107**, (Renumbered from 30-6-4.3, as last amended by Laws of Utah 2001, Chapter 247)

- 32 **78B-7-108**, (Renumbered from 30-6-4.5, as last amended by Laws of Utah 1996,
33 Chapter 244)
- 34 **78B-7-109**, (Renumbered from 30-6-4.1, as last amended by Laws of Utah 1998,
35 Chapter 282)
- 36 **78B-7-110**, (Renumbered from 30-6-4.4, as enacted by Laws of Utah 1995, Chapter
37 300)
- 38 **78B-7-111**, (Renumbered from 30-6-4.6, as enacted by Laws of Utah 1995, Chapter
39 300)
- 40 **78B-7-112**, (Renumbered from 30-6-11, as last amended by Laws of Utah 1996,
41 Chapter 318)
- 42 **78B-7-113**, (Renumbered from 30-6-8, as last amended by Laws of Utah 1998, Chapter
43 263)
- 44 **78B-7-114**, (Renumbered from 30-6-14, as enacted by Laws of Utah 1996, Chapter
45 244)
- 46 **78B-7-115**, (Renumbered from 30-6-15, as enacted by Laws of Utah 2003, Chapter 68)
- 47 **78B-7-116**, (Renumbered from 30-6-12, as last amended by Laws of Utah 2006,
48 Chapter 157)
- 49 **78B-7-201**, (Renumbered from 78-3h-101, as last amended by Laws of Utah 2004,
50 Chapter 201)
- 51 **78B-7-202**, (Renumbered from 78-3h-102, as last amended by Laws of Utah 2004,
52 Chapter 201)
- 53 **78B-7-203**, (Renumbered from 78-3h-103, as last amended by Laws of Utah 2004,
54 Chapter 201)
- 55 **78B-7-204**, (Renumbered from 78-3h-104, as last amended by Laws of Utah 2006,
56 Chapter 157)
- 57 **78B-7-205**, (Renumbered from 78-3h-105, as last amended by Laws of Utah 2007,
58 Chapter 326)
- 59 **78B-7-206**, (Renumbered from 78-3h-106, as enacted by Laws of Utah 2003, Chapter
60 68)
- 61 **78B-7-207**, (Renumbered from 78-3h-107, as enacted by Laws of Utah 2003, Chapter
62 68)

63 **78B-7-301**, (Renumbered from 30-6a-101, as enacted by Laws of Utah 2006, Chapter
64 157)

65 **78B-7-302**, (Renumbered from 30-6a-102, as enacted by Laws of Utah 2006, Chapter
66 157)

67 **78B-7-303**, (Renumbered from 30-6a-103, as enacted by Laws of Utah 2006, Chapter
68 157)

69 **78B-7-304**, (Renumbered from 30-6a-104, as enacted by Laws of Utah 2006, Chapter
70 157)

71 **78B-7-305**, (Renumbered from 30-6a-105, as enacted by Laws of Utah 2006, Chapter
72 157)

73 **78B-7-306**, (Renumbered from 30-6a-106, as enacted by Laws of Utah 2006, Chapter
74 157)

75 **78B-7-307**, (Renumbered from 30-6a-107, as enacted by Laws of Utah 2006, Chapter
76 157)

77 **78B-7-308**, (Renumbered from 30-6a-108, as enacted by Laws of Utah 2006, Chapter
78 157)

79 **78B-7-309**, (Renumbered from 30-6a-109, as enacted by Laws of Utah 2006, Chapter
80 157)

81 **78B-7-310**, (Renumbered from 30-6a-111, as last amended by Laws of Utah 2006,
82 Third Special Session, Chapter 3)

83 REPEALS:

84 **30-6a-110**, as enacted by Laws of Utah 2006, Chapter 157

85

86 *Be it enacted by the Legislature of the state of Utah:*

87 Section 1. Section **78B-7-101** is enacted to read:

88 **CHAPTER 7. PROTECTIVE ORDERS**

89 **Part 1. Cohabitant Abuse Act**

90 **78B-7-101. Title.**

91 This part is known and may be cited as the "Cohabitant Abuse Act."

92 Section 2. Section **78B-7-102**, which is renumbered from Section 30-6-1 is

93 renumbered and amended to read:

94 ~~[30-6-1].~~ **78B-7-102. Definitions.**

95 As used in this chapter:

96 (1) "Abuse" means intentionally or knowingly causing or attempting to cause a
97 cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear
98 of imminent physical harm.

99 (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person
100 who is 16 years of age or older who:

101 (a) is or was a spouse of the other party;

102 (b) is or was living as if a spouse of the other party;

103 (c) is related by blood or marriage to the other party;

104 (d) has one or more children in common with the other party;

105 (e) is the biological parent of the other party's unborn child; or

106 (f) resides or has resided in the same residence as the other party.

107 (3) Notwithstanding Subsection (2), "cohabitant" does not include:

108 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

109 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18
110 years of age.

111 (4) "Court clerk" means a district court clerk.

112 (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

113 (6) "Ex parte protective order" means an order issued without notice to the defendant in
114 accordance with this chapter.

115 (7) "Foreign protection order" is as defined in Section ~~[30-6a-102]~~ 78B-7-302.

116 (8) "Law enforcement unit" or "law enforcement agency" means any public agency
117 having general police power and charged with making arrests in connection with enforcement
118 of the criminal statutes and ordinances of this state or any political subdivision.

119 (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
120 Officer Classifications.

121 (10) "Protective order" means an order issued pursuant to this chapter subsequent to a
122 hearing on the petition, of which the petitioner and respondent have been given notice in
123 accordance with this chapter.

Section 3. Section **78B-7-103**, which is renumbered from Section 30-6-2 is renumbered and amended to read:

[30-6-2]. 78B-7-103. Abuse or danger of abuse -- Protective orders.

(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.

(2) A petition for a protective order may be filed under this chapter regardless of whether an action for divorce between the parties is pending.

(3) A petition seeking a protective order may not be withdrawn without approval of the court.

Section 4. Section **78B-7-104**, which is renumbered from Section 30-6-3 is renumbered and amended to read:

[30-6-3]. 78B-7-104. Venue of action.

(1) The district court has jurisdiction of any action brought under this chapter.

(2) An action brought pursuant to this chapter shall be filed in the county where either party resides or in which the action complained of took place.

Section 5. Section **78B-7-105**, which is renumbered from Section 30-6-4 is renumbered and amended to read:

[30-6-4]. 78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter ~~[on or before September 1, 1995]~~. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil

violation, as provided in Subsection ~~[30-6-4.2]~~ 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to provide that service, but the court clerk's office is responsible to see that the service is provided;

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation

order forms when necessary.

(3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte protective order;

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) fees for service of a petition, ex parte protective order, or protective order.

(4) A petition for an order of protection shall be in writing and verified.

(5) (a) All orders for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

(b) Each protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Section 6. Section **78B-7-106**, which is renumbered from Section 30-6-4.2 is renumbered and amended to read:

[~~30-6-4.2~~]. 78B-7-106. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a

217 modification issued ex parte:

218 (a) enjoin the respondent from threatening to commit or committing domestic violence
219 or abuse against the petitioner and any designated family or household member;

220 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
221 communicating with the petitioner, directly or indirectly;

222 (c) order that the respondent is excluded from the petitioner's residence and its
223 premises, and order the respondent to stay away from the residence, school, or place of
224 employment of the petitioner, and the premises of any of these, or any specified place
225 frequented by the petitioner and any designated family or household member;

226 (d) upon finding that the respondent's use or possession of a weapon may pose a
227 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
228 possessing a firearm or other weapon specified by the court;

229 (e) order possession and use of an automobile and other essential personal effects, and
230 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
231 the parties to ensure that the petitioner is safely restored to possession of the residence,
232 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
233 removal of personal belongings;

234 (f) grant to the petitioner temporary custody of any minor children of the parties;

235 (g) order any further relief that the court considers necessary to provide for the safety
236 and welfare of the petitioner and any designated family or household member; and

237 (h) if the petition requests child support or spousal support, at the hearing on the
238 petition order both parties to provide verification of current income, including year-to-date pay
239 stubs or employer statements of year-to-date or other period of earnings, as specified by the
240 court, and complete copies of tax returns from at least the most recent year.

241 (3) A court may grant the following relief in an order for protection or a modification
242 of an order after notice and hearing, whether or not the respondent appears:

243 (a) grant the relief described in Subsection (2); and

244 (b) specify arrangements for parent-time of any minor child by the respondent and
245 require supervision of that parent-time by a third party or deny parent-time if necessary to
246 protect the safety of the petitioner or child.

247 (4) Following the protective order hearing, the court shall:

248 (a) as soon as possible, deliver the order to the county sheriff for service of process;

249 (b) make reasonable efforts to ensure that the order for protection is understood by the
250 petitioner, and the respondent, if present;

251 (c) transmit, by the end of the next business day after the order is issued, a copy of the
252 order for protection to the local law enforcement agency or agencies designated by the
253 petitioner; and

254 (d) transmit a copy of the order to the statewide domestic violence network described
255 in Section ~~[30-6-8]~~ 78B-7-113.

256 (5) (a) Each protective order shall include two separate portions, one for provisions, the
257 violation of which are criminal offenses, and one for provisions, the violation of which are civil
258 violations, as follows:

259 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
260 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

261 (ii) civil offenses are those under Subsections (2)(f) through (h), and Subsection (3)(a)
262 as it refers to Subsections (2)(f) through (h).

263 (b) The criminal provision portion shall include a statement that violation of any
264 criminal provision is a class A misdemeanor.

265 (c) The civil provision portion shall include a notice that violation of or failure to
266 comply with a civil provision is subject to contempt proceedings.

267 (6) The protective order shall include:

268 (a) a designation of a specific date, determined by the court, when the civil portion of
269 the protective order either expires or is scheduled for review by the court, which date may not
270 exceed 150 days after the date the order is issued, unless the court indicates on the record the
271 reason for setting a date beyond 150 days;

272 (b) information the petitioner is able to provide to facilitate identification of the
273 respondent, such as Social Security number, driver license number, date of birth, address,
274 telephone number, and physical description; and

275 (c) a statement advising the petitioner that:

276 (i) after two years from the date of issuance of the protective order, a hearing may be
277 held to dismiss the criminal portion of the protective order;

278 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,

advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section ~~[30-6-8]~~ 78B-7-113.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material

310 change in circumstances.

311 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
312 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

313 Section 7. Section **78B-7-107**, which is renumbered from Section 30-6-4.3 is
314 renumbered and amended to read:

315 **~~[30-6-4.3].~~ 78B-7-107. Hearings on ex parte orders.**

316 (1) (a) When a court issues an ex parte protective order the court shall set a date for a
317 hearing on the petition within 20 days after the ex parte order is issued.

318 (b) If at that hearing the court does not issue a protective order, the ex parte protective
319 order shall expire, unless it is otherwise extended by the court.

320 (c) If at that hearing the court issues a protective order, the ex parte protective order
321 remains in effect until service of process of the protective order is completed.

322 (d) A protective order issued after notice and a hearing is effective until further order of
323 the court.

324 (e) If the hearing on the petition is heard by a commissioner, either the petitioner or
325 respondent may file an objection within ten days of the entry of the recommended order and the
326 assigned judge shall hold a hearing within 20 days of the filing of the objection.

327 (2) Upon a hearing under this section, the court may grant any of the relief described in
328 Section ~~[30-6-4.2]~~ **78B-7-106**.

329 (3) When a court denies a petition for an ex parte protective order or a petition to
330 modify an order for protection ex parte, the court shall set the matter for hearing upon notice to
331 the respondent.

332 (4) A respondent who has been served with an ex parte protective order may seek to
333 vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a)
334 by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice
335 of hearing on that motion shall be personally served on the petitioner at least two days prior to
336 the hearing on the motion to vacate.

337 Section 8. Section **78B-7-108**, which is renumbered from Section 30-6-4.5 is
338 renumbered and amended to read:

339 **~~[30-6-4.5].~~ 78B-7-108. Mutual protective orders prohibited.**

340 (1) A court may not grant a mutual order or mutual orders for protection to opposing

341 parties, unless each party:

342 (a) has filed an independent petition against the other for a protective order, and both
343 petitions have been served;

344 (b) makes a showing at a due process protective order hearing of abuse or domestic
345 violence committed by the other party; and

346 (c) demonstrates the abuse or domestic violence did not occur in self-defense.

347 (2) If the court issues mutual protective orders, the circumstances justifying those
348 orders shall be documented in the case file.

349 Section 9. Section **78B-7-109**, which is renumbered from Section 30-6-4.1 is
350 renumbered and amended to read:

351 **[30-6-4.1]. 78B-7-109. Continuing duty to inform court of other proceedings --**
352 **Effect of other proceedings.**

353 (1) At any hearing in a proceeding to obtain an order for protection, each party has a
354 continuing duty to inform the court of each proceeding for an order for protection, any civil
355 litigation, each proceeding in juvenile court, and each criminal case involving either party,
356 including the case name, the file number, and the county and state of the proceeding, if that
357 information is known by the party.

358 (2) (a) An order for protection issued pursuant to this chapter is in addition to and not
359 in lieu of any other available civil or criminal proceeding.

360 (b) A petitioner is not barred from seeking a protective order because of other pending
361 proceedings.

362 (c) A court may not delay granting relief under this chapter because of the existence of
363 a pending civil action between the parties.

364 (3) A petitioner may omit his or her address from all documents filed with the court
365 under this chapter, but shall separately provide the court with a mailing address that is not to be
366 made part of the public record, but that may be provided to a peace officer or entity for service
367 of process.

368 Section 10. Section **78B-7-110**, which is renumbered from Section 30-6-4.4 is
369 renumbered and amended to read:

370 **[30-6-4.4]. 78B-7-110. No denial of relief solely because of lapse of time.**

371 The court may not deny a petitioner relief requested pursuant to this chapter solely

because of a lapse of time between an act of domestic violence or abuse and the filing of the petition for an order of protection.

Section 11. Section **78B-7-111**, which is renumbered from Section 30-6-4.6 is renumbered and amended to read:

[30-6-4.6]. 78B-7-111. Prohibition of court-ordered or court-referred mediation.

In any case brought under the provisions of this chapter, the court may not order the parties into mediation for resolution of the issues in a petition for an order for protection.

Section 12. Section **78B-7-112**, which is renumbered from Section 30-6-11 is renumbered and amended to read:

[30-6-11]. 78B-7-112. Division of Child and Family Services -- Development and assistance of volunteer network.

(1) The Division of Child and Family Services within the Department of Human Services shall, either directly or by contract:

(a) develop a statewide network of volunteers and community resources to support, assist, and advocate on behalf of victims of domestic violence;

(b) train volunteers to provide clerical assistance to persons seeking orders for protection under this chapter;

(c) coordinate the provision of volunteer services with Utah Legal Services and the Legal Aid Society; and

(d) assist local government officials in establishing community based support systems for victims of domestic violence.

(2) Volunteers shall provide additional nonlegal assistance to victims of domestic violence, including providing information on the location and availability of shelters and other community resources.

Section 13. Section **78B-7-113**, which is renumbered from Section 30-6-8 is renumbered and amended to read:

[30-6-8]. 78B-7-113. Statewide domestic violence network -- Peace officers' duties -- Prevention of abuse in absence of order -- Limitation of liability.

(1) (a) ~~[On or before January 1, 1996, law]~~ Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to

ensure that peace officers at the scene of an alleged violation of a protective order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter or Title 77, Chapter 36, Cohabitant Abuse Procedures Act. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter and Title 77, Chapter 36.

(b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:

(i) all orders for protection issued by a court of this state; and
(ii) all other court orders or reports of court action that are required to be available on the network under this chapter and Title 77, Chapter 36.

(c) The entities described in Subsection (b) may utilize the same mechanism as the statewide warrant system, described in Section 53-10-208.

(d) All orders and reports required to be available on the network shall be available within 24 hours after court action. If the court that issued the order is not part of the state court computer system, the orders and reports shall be available on the network within 72 hours.

(e) The information contained in the network shall be available to a court, law enforcement officer, or agency upon request.

(2) When any peace officer has reason to believe a cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of abuse, although no protective order has been issued, that officer shall use all reasonable means to prevent the abuse, including:

(a) remaining on the scene as long as it reasonably appears there would otherwise be danger of abuse;

(b) making arrangements for the victim to obtain emergency medical treatment;

(c) making arrangements for the victim to obtain emergency housing or shelter care;

(d) explaining to the victim his or her rights in these matters;

(e) asking the victim to sign a written statement describing the incident of abuse; or

(f) arresting and taking into physical custody the abuser in accordance with the provisions of Title 77, Chapter 36.

(3) No person or institution may be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that person acted in good faith and without malice.

Section 14. Section **78B-7-114**, which is renumbered from Section 30-6-14 is renumbered and amended to read:

[30-6-14]. 78B-7-114. Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Section 15. Section **78B-7-115**, which is renumbered from Section 30-6-15 is renumbered and amended to read:

[30-6-15]. 78B-7-115. Dismissal of protective order when divorce is final.

When a protective order exists and a divorce proceeding is pending between the same parties named in the protective order, the protective order shall be dismissed when the court issues a decree of divorce for the parties if the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing, and the court specifically finds that the order need not continue. If the court dismisses the protective order, the court shall immediately issue an order of dismissal to be filed in the protective order action and transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section ~~[30-6-8]~~ 78B-7-113.

Section 16. Section **78B-7-116**, which is renumbered from Section 30-6-12 is renumbered and amended to read:

[30-6-12]. 78B-7-116. Full faith and credit for foreign protection orders.

(1) A foreign protection order is enforceable in this state as provided in Title ~~[30]~~ 78B, Chapter ~~[6a,]~~ 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) (a) A person entitled to protection under a foreign protection order may file the order in any district court by filing with the court a certified copy of the order. A filing fee may not be required.

(b) The person filing the foreign protection order shall swear under oath in an affidavit, that to the best of the person's knowledge the order is presently in effect as written and the respondent was personally served with a copy of the order.

(c) The affidavit described in Subsection (2)(b) shall be in the form adopted by the Administrative Office of the Courts, consistent with its responsibilities to develop and adopt forms under Section ~~[30-6-4]~~ 78B-7-105.

(d) The court where a foreign protection order is filed shall transmit a copy of the order to the statewide domestic violence network described in Section ~~[30-6-8]~~ 78B-7-113.

(e) Upon inquiry by a law enforcement agency, the clerk of the district court shall make a copy of the foreign protection order available.

(f) After a foreign protection order is filed, the district court shall furnish a certified copy of the order to the person who filed the order.

(g) A filed foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the statewide domestic violence network described in Section ~~[30-6-8]~~ 78B-7-113.

(3) Law enforcement personnel may:

(a) rely upon a certified copy of any foreign protection order which has been provided to the peace officer by any source;

(b) rely on the statement of the person protected by the order that the order is in effect and the respondent was personally served with a copy of the order; or

(c) consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(4) A violation in Utah of a foreign protection order is subject to the same penalties as the violation of a protective order issued in Utah.

Section 17. Section **78B-7-201**, which is renumbered from Section 78-3h-101 is renumbered and amended to read:

Part 2. Child Protective Orders

~~[78-3h-101]~~. **78B-7-201. Definitions.**

As used in this chapter:

(1) "Abuse" means physical abuse or sexual abuse.

(2) "Court" means the district court or juvenile court.

(3) All other terms have the same meaning as defined in Section ~~[78-3a-103]~~ 78A-5-105.

Section 18. Section **78B-7-202**, which is renumbered from Section 78-3h-102 is

496 renumbered and amended to read:

497 ~~[78-3h-102].~~ **78B-7-202.** **Petition -- Ex parte determination -- Guardian ad**
498 **litem -- Referral to division.**

499 (1) Any interested person may file a petition for a protective order on behalf of a child
500 who is being abused or is in imminent danger of being abused. The petitioner shall first make
501 a referral to the division.

502 (2) Upon the filing of a petition, the clerk of the court shall:

503 (a) review the records of the juvenile court, the district court, and the management
504 information system of the division to find any petitions, orders, or investigations related to the
505 child or the parties to the case;

506 (b) request the records of any law enforcement agency identified by the petitioner as
507 having investigated abuse of the child; and

508 (c) identify and obtain any other background information that may be of assistance to
509 the court.

510 (3) Upon the filing of a petition, the court shall immediately determine, based on the
511 evidence and information presented, whether the minor is being abused or is in imminent
512 danger of being abused. If so, the court shall enter an ex parte child protective order.

513 (4) The court may appoint an attorney guardian ad litem for the child who is the subject
514 of the petition.

515 Section 19. Section **78B-7-203**, which is renumbered from Section 78-3h-103 is
516 renumbered and amended to read:

517 ~~[78-3h-103].~~ **78B-7-203.** **Hearing.**

518 (1) The court shall schedule a hearing within 20 days after the ex parte determination.

519 (2) The petition, ex parte child protective order, and notice of hearing shall be served
520 on the respondent, the minor's parent or guardian, and, if appointed, the guardian ad litem. The
521 notice shall contain:

522 (a) the name and address of the person to whom it is directed;

523 (b) the date, time, and place of the hearing;

524 (c) the name of the minor on whose behalf a petition is being brought; and

525 (d) a statement that a person is entitled to have an attorney present at the hearing.

526 (3) The court shall provide an opportunity for any person having relevant knowledge to

present evidence or information. The court may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) If the court determines, based on a preponderance of the evidence, that the minor is being abused or is in imminent danger of being abused, the court shall enter a child protective order. With the exception of the provisions of Section ~~[78-3a-320]~~ 78B-5-321, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title ~~[78]~~ 78B, Chapter ~~[3a]~~ 5, Part 3, Abuse Neglect and Dependency Proceedings.

Section 20. Section **78B-7-204**, which is renumbered from Section 78-3h-104 is renumbered and amended to read:

~~[78-3h-104].~~ **78B-7-204. Content of order.**

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section 77-36-2.4:

(a) enjoin the respondent from threatening to commit or committing abuse of the minor;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the minor, directly or indirectly;

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the minor and the premises of any of these or any specified place frequented by the minor;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the minor, prohibit the respondent from purchasing, using, or possessing a firearm or other specified weapon; and

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of a minor who is the subject of the petition;

(b) determine parent-time with a minor who is the subject of the petition, including denial of parent-time if necessary to protect the safety of the minor, and require supervision of

558 parent-time by a third party;

559 (c) determine support in accordance with Title [78] 78B, Chapter [45] 12, Uniform
560 Civil Liability for Support Act; and

561 (d) order any further relief the court considers necessary to provide for the safety and
562 welfare of the minor.

563 (3) A child protective order and an ex parte child protective order shall include:

564 (a) a statement that violation of a criminal provision is a class A misdemeanor and
565 violation of a civil provision is contempt of court; and

566 (b) information the petitioner is able to provide to facilitate identification of the
567 respondent, such as Social Security number, driver license number, date of birth, address,
568 telephone number, and physical description.

569 (4) A child protective order shall include:

570 (a) a statement that:

571 (i) two years from entry of the order, the respondent may petition to dismiss the
572 criminal portion of the order;

573 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
574 advise the court of the petitioner's address for notice of any hearing; and

575 (iii) the address provided by the petitioner will not be made available to the
576 respondent;

577 (b) the date when the civil portion of the order will expire or be reviewed; and

578 (c) the following statement: "Respondent was afforded notice and opportunity to be
579 heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act
580 of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United
581 States, the District of Columbia, tribal lands, and United States territories. This order complies
582 with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

583 Section 21. Section **78B-7-205**, which is renumbered from Section 78-3h-105 is
584 renumbered and amended to read:

585 ~~[78-3h-105]~~. **78B-7-205. Service -- Income withholding -- Expiration.**

586 (1) If the court enters an ex parte child protective order or a child protective order, the
587 court shall:

588 (a) make reasonable efforts to ensure that the order is understood by the petitioner and

the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered transmit a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section ~~[30-6-8]~~ 78B-7-113.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section ~~[30-6-8]~~ 78B-7-113 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

(5) After notice and hearing a court may modify or vacate a child protective order without a showing of substantial and material change in circumstances, except that the criminal provisions of the child protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(6) The civil provisions of the child protective order expire 150 days after the date of the order unless a different date is set by the court. The court may not set a date more than 150 days after the date of the order without a finding of good cause. The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the

620 order without a finding of good cause.

621 (7) Notwithstanding Subsections (5) and (6), unless the judge orders otherwise all child
622 protective orders expire when the subject of the order is 18 years of age, unless the judge
623 vacates the order earlier.

624 Section 22. Section **78B-7-206**, which is renumbered from Section 78-3h-106 is
625 renumbered and amended to read:

626 ~~[78-3h-106].~~ **78B-7-206. Statewide domestic violence network.**

627 The Administrative Office of the Courts, in cooperation with the Department of Public
628 Safety and the Criminal Investigations and Technical Services Division, shall post ex parte
629 child protective orders, child protective orders, and any modifications to them on the statewide
630 network established in Section ~~[30-6-8]~~ 78B-7-113.

631 Section 23. Section **78B-7-207**, which is renumbered from Section 78-3h-107 is
632 renumbered and amended to read:

633 ~~[78-3h-107].~~ **78B-7-207. Forms and assistance -- No fees.**

634 (1) The Administrative Office of the Courts shall adopt and make available uniform
635 forms for petitions and orders conforming to this part. The forms shall notify the petitioner
636 that:

637 (a) a knowing falsehood in any statement under oath may subject the petitioner to
638 felony prosecution;

639 (b) the petitioner may provide a copy of the order to the principal of the minor's school;
640 and

641 (c) the petitioner may enforce a court order through the court if the respondent violates
642 or fails to comply with a provision of the order.

643 (2) If the petitioner is not represented, the clerk of the court shall provide, directly or
644 through an agent:

645 (a) the forms adopted pursuant to Subsection (1);

646 (b) clerical assistance in completing the forms and filing the petition;

647 (c) information regarding means for service of process;

648 (d) a list of organizations with telephone numbers that may represent the petitioner;

649 and

650 (e) information regarding the procedure for transporting a jailed or imprisoned

respondent to hearings, including transportation order forms when necessary.

(3) No fee may be imposed by a court, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining copies necessary for service or delivery to law enforcement officials; or

(c) service of a petition, ex parte child protective order, or child protective order.

Section 24. Section **78B-7-301**, which is renumbered from Section 30-6a-101 is renumbered and amended to read:

Part 3. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

~~[30-6a-101].~~ **78B-7-301. Title.**

This ~~[chapter]~~ part is known as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Section 25. Section **78B-7-302**, which is renumbered from Section 30-6a-102 is renumbered and amended to read:

~~[30-6a-102].~~ **78B-7-302. Definitions.**

As used in this chapter:

(1) "Foreign protection order" means a protection order issued by a tribunal of another state.

(2) "Issuing state" means the state whose tribunal issues a protection order.

(3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family-violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue

682 protection orders.

683 (8) "Tribunal" means a court, agency, or other entity authorized by law to issue or
684 modify a protection order.

685 Section 26. Section **78B-7-303**, which is renumbered from Section 30-6a-103 is
686 renumbered and amended to read:

687 ~~[30-6a-103].~~ **78B-7-303. Judicial enforcement of order.**

688 (1) A person authorized by the law of this state to seek enforcement of a protection
689 order may seek enforcement of a valid foreign protection order in a tribunal of this state. The
690 tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal
691 of this state would lack power to provide but for this section. The tribunal shall enforce the
692 order, whether the order was obtained by independent action or in another proceeding, if it is an
693 order issued in response to a complaint, petition, or motion filed by or on behalf of an
694 individual seeking protection. In a proceeding to enforce a foreign protection order, the
695 tribunal shall follow the procedures of this state for the enforcement of protection orders.

696 (2) A tribunal of this state may not enforce a foreign protection order issued by a
697 tribunal of a state that does not recognize the standing of a protected individual to seek
698 enforcement of the order.

699 (3) A tribunal of this state shall enforce the provisions of a valid foreign protection
700 order which govern custody and visitation, if the order was issued in accordance with the
701 jurisdictional requirements governing the issuance of custody and visitation orders in the
702 issuing state.

703 (4) A foreign protection order is valid if it:

704 (a) identifies the protected individual and the respondent;

705 (b) is currently in effect;

706 (c) was issued by a tribunal that had jurisdiction over the parties and subject matter
707 under the law of the issuing state; and

708 (d) was issued after the respondent was given reasonable notice and had an opportunity
709 to be heard before the tribunal issued the order or, in the case of an order ex parte, the
710 respondent was given notice and has had or will have an opportunity to be heard within a
711 reasonable time after the order was issued, in a manner consistent with the rights of the
712 respondent to due process.

(5) A foreign protection order valid on its face is prima facie evidence of its validity.

(6) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(7) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(b) the tribunal of the issuing state made specific findings in favor of the respondent.

(8) (a) The juvenile court has jurisdiction to enforce foreign protection orders under this section over which the juvenile court would have had jurisdiction if the order had been originally sought in this state.

(b) The district court has jurisdiction to enforce foreign protection orders under this section:

(i) over which the district court would have had jurisdiction if the order had been originally sought in this state; or

(ii) that are not under the jurisdiction of the juvenile court under Subsection (8)(a).

Section 27. Section **78B-7-304**, which is renumbered from Section 30-6a-104 is renumbered and amended to read:

~~[30-6a-104].~~ **78B-7-304. Nonjudicial enforcement of order.**

(1) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(2) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(3) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(4) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this chapter.

Section 28. Section **78B-7-305**, which is renumbered from Section 30-6a-105 is renumbered and amended to read:

~~[30-6a-105].~~ **78B-7-305. Registration of order.**

Any individual may register a foreign protection order in this state under Section ~~[30-6-12]~~ **78B-7-116.**

Section 29. Section **78B-7-306**, which is renumbered from Section 30-6a-106 is renumbered and amended to read:

~~[30-6a-106].~~ **78B-7-306. Immunity.**

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this chapter.

Section 30. Section **78B-7-307**, which is renumbered from Section 30-6a-107 is renumbered and amended to read:

~~[30-6a-107].~~ **78B-7-307. Other remedies.**

A protected individual who pursues remedies under this chapter is not precluded from pursuing other legal or equitable remedies against the respondent.

Section 31. Section **78B-7-308**, which is renumbered from Section 30-6a-108 is renumbered and amended to read:

~~[30-6a-108].~~ **78B-7-308. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to

774 promote uniformity of the law with respect to its subject matter among states that enact it.

775 Section 32. Section **78B-7-309**, which is renumbered from Section 30-6a-109 is

776 renumbered and amended to read:

777 ~~[30-6a-109].~~ **78B-7-309. Severability clause.**

778 If any provision of this chapter or its application to any person or circumstance is held
779 invalid, the invalidity does not affect other provisions or applications of this chapter which can
780 be given effect without the invalid provision or application, and to this end the provisions of
781 this chapter are severable.

782 Section 33. Section **78B-7-310**, which is renumbered from Section 30-6a-111 is

783 renumbered and amended to read:

784 ~~[30-6a-111].~~ **78B-7-310. Transitional provision.**

785 This chapter applies to protection orders issued before July 1, 2006 and to continuing
786 actions for enforcement of foreign protection orders commenced before July 1, 2006. A
787 request for enforcement of a foreign protection order made on or after July 1, 2006 for
788 violations of a foreign protection order occurring before July 1, 2006 is governed by this
789 chapter.

790 Section 34. **Repealer.**

791 This bill repeals:

792 Section **30-6a-110, Effective date.**